

IN THE HIGH COURT OF BOMBAY AT PANAJI**Company Petition No. 8 of 2006**

1. Shri Manoj Caisucar,
major, unmarried,
resident of
Varsha Colony Housing Society,
Alto, Porvorim, Bardez, Goa.

2. Shri Laxmidhar Dalvi,
major, married,
resident of
D-1, Gulmohar Society,
Khadpaband,
Ponda, Goa – 403 401.

3. Shri Venktex Kamat,
major, married,
resident of A-103,
Eye Star Dwelling,
Don Bosco Road,
Behind PWD, Fatorda-Goa.

4. Shri Harshad Sukhthanker,
major, married,
resident of E-3, Damodar Bldg.,
Opp. Margao Police Station,
Comba-Margao, Goa.

5. Shri Swapnil Vaze,
major, single,
resident of
H.No. 266/3,
Sirsaim-Bardez, Goa.

6. Shri Niraj Laad,
r/o. B-1/101,
Garden Centre,
Opp. Police Station,
Mapusa, Goa.

7. Shri Lincoln Dalgado,
r/o. Mapusa, Goa.

8. Shri Ashish Shankardas
r/o. Opp. Ground,
Housing Board, Mapusa, Goa.

9. Sandesh Anvekar
r/o. Khorlim, Mapusa, Goa.

.... Petitioners

V/s.

WEBSCI TECHNOLOGIES PVT. LTD.,
having registered office at 14,
Ahilya House, Alto Betim,
Bardez, Goa-403 521.

.... Respondent

Mr. V.A. Lawande, Advocate for the Petitioners.

Mrs. A.A. Agni, Advocate for the Respondent.

CORAM : **N.A. BRITTO, J.**

DATE : **20th July, 2007**

ORAL ORDER :

Heard the learned Counsel on behalf of both the parties.

2. This petition presented on 27/02/2006 is for winding up of the respondent-Company, under section 433 (e) and (f) of the Companies Act, 1956 (Act, for short).

3. The petition is filed under ground (e) on the allegation that the Company is indebted to the petitioner in an un-ascertained sum of money with

interest at the rate of 12% per annum. It is filed under ground (f) on the allegation that it is just an equitable to wind up the Company as it is commercially insolvent.

4. There is no dispute that the petitioners were working as software developers with the Company. As per the Company, the Company ceased its operations on 01/09/2002 but as per the petitioners they continued to work till 28/02/2003 and it is for this period that they were required to be paid by the Company.

5. Admittedly, no notice was served upon the Company by the petitioners as contemplated by Section 434 of the Act. In the petition it is alleged that all the petitioners were drawing a salary of Rs. 15,000/- to Rs. 18,000/- per month. It is also alleged that the Company has to make a payment of Rs. 15,000/- per month per petitioner and it is the submission of learned Counsel on behalf of the petitioners that the Company is indebted to each of the petitioners at least in the sum of Rs. 90,000/- from 1/09/2002 to 22/02/2003. The petitioners have not stated in the petition as to what sum is due and payable by the Company either individually or collectively to the petitioners. The petitioners have also not produced the payslips/payrolls of the petitioners for any month from 01/09/2002. Payslips produced for the

month of January, 2002 of petitioner no.6 Shri Niraj Laud shows that his gross salary was Rs. 15,000/- and for the month of July, 2002 it was Rs. 16,000/- but in case of petitioner no. 9 Sandesh Anvekar, his gross salary was Rs. 10,800/- only, in January, 1999. This payslip (at page 80) belies the claim of the petition as that each of them are entitled to Rs. 90,000/-. As per the Company, the petitioners did not work for the Company after 01/09/2002. In my view, the petitioners themselves are not certain as to what is the exact sum which is due and payable to them by the Company and there is also otherwise no prima facie evidence to accept their claim that they worked for the Company after it closed its operations with effect from 01/09/2002. In other words, the petition raises disputed questions of facts which cannot be resolved in a summary inquiry and the appropriate relief for the petitioners would be the Civil Court. In the absence of a specific and ascertained sum being claimed by the petitioners, this petition ought not to be entertained; merely on vague averments. A winding up petition is not a legitimate means of seeking to enforce payment of a debt which is bonafide disputed by the Company.

6. The basis of filing this petition is the letter dated 27/02/2003 signed by one Atul R. Naik and by Rajeev Pawaskar. As per the petitioners their salaries for the months of September, 2002 to February, 2003 (or is it up to 22/02/2003?) were not paid by the Company and they had collectively made

a demand and pursuant to it the Company had issued the said acknowledgment admitting the Company's liability to make the payment for the said period between 01/09/2002 to 22/02/2003 and the petitioners were assured of the same. The said letter which is produced at Exhibit D to the petition states that as per the mail received from Mr. R.S. Tare, all the Goa employees' salary for the said period would be paid and that they should remain assured about the same. The said letter apparently was addressed to the employees of the Goa Office of the Company. The Company does not dispute that the said letter was signed by Atul R. Naik and Rajeev Pawaskar but what is seriously disputed, on behalf of the Company, firstly, is that the said Atul R. Naik was not their Human Resources Manager, and secondly, both of them were not authorised by the Company to issue the letter. On behalf of the Company, reference is made to clause 56 of the Memorandum of Association of the Company to show that the management of the business of the Company was vested in the Directors and that the Directors could have exercised powers as authorised by the Company. The said R.S. Tare referred to in the said letter dated 27/02/2003 has filed an affidavit dated 20/06/2007 stating that his mother Smt. Yashodha Tare, the Director of the Company, had informed him about the filing of the petition and the said letter dated 27/02/2003. In the said affidavit Shri Tare has categorically stated that he was not the Director of the Company either in February, 2003 or at any time before February, 2003 or

thereafter, and that he was also not an employee or Company executive of the Company at any point of time and that he had not sent any mail either to Atul R. Naik or to Rajeev Pawaskar to the effect that the Goa employees' salaries of the Company would be paid from the period from 01/09/2002 till 22/02/2003. The Company has also demonstrated that the said Atul R. Naik was not their Human Resources Manager by producing letter dated 1/08/1999 (at page 88 of the paper book) which shows that Atul R. Naik was the Trainee System Administrator and the General Manager of Human Resources was one Terence Menezes. It is also pointed out on behalf of the Company, by pointing out to another letter at page 82 that Atul R. Naik has signed as Administration Manager and therefore could not have signed as H.R. Manager. The petitioners except for producing the said bare letter dated 27/02/2003 have not filed any affidavit either of the said Atul R. Naik or for that matter Rajeev Pawaskar and the affidavit of Shri R.S. Tare raises a serious dispute about the correctness of the said letter. Disputed questions which require larger inquiry cannot be decided in summary jurisdiction and will be required to be agitated before a Civil Court. The said letter therefore, cannot be taken as prima facie evidence of the facts stated therein.

7. As regards the ground (f) the petitioners have filed a copy of balance sheet for the period ending 31/03/2002. However, learned Counsel on

behalf of the petitioners, has not been able to demonstrate on the basis of the said balance sheet that the Company had suffered any losses for the said period. Learned Counsel on behalf of the petitioners, next submits that as per the Company itself, the Company has not done any business after 01/09/2002 and that being so, this would be a fit case to wind up the Company in terms of clause (c) of Section 433 of the Act. However, I must hasten to add that this was not a ground taken in the petition and, therefore, the same need not be considered by this Court. Learned Counsel on behalf of the petitioners further submits that as the Company has not carried out any business after 01/09/2002, it only shows that its substratum has gone. Here again it may be noted that such a plea was not taken by the petitioner in his petition and, therefore, need not be considered by this Court. Learned Counsel on behalf of the petitioners, points out that such a ground has been taken in the rejoinder filed by the petitioners. In case such a ground was required to be taken then the petitioners ought to have seen that the petition was amended and the ground taken so that the Company could adequately reply to the same. In this context, learned counsel on behalf of the respondent has placed reliance on ***Mahesh Enterprises V/s. Argus Industries Pvt. Ltd. (1999 (4) Bom. C.R. 457)*** wherein this Court observed thus:

The requirement for consideration is whether there are sufficient pleadings in the petition warranting consideration by the Court under section 434(1)(c). What is essential is that there must be pleadings which the company must be called upon to

meet. No material in this case has been pleaded which would result in considering the winding up of company on the touchstone of the requirement of section 431(1)(c). Apart from that as held by the Division Bench of this Court in 1978(48) Com.Cas. 481, it would be unfair to permit a fresh pleading to be raised at the time of hearing as the case of the company would have to be considered on the date of filing of the petition. In the instant case there is no amendment of the petition. However, by affidavit reliance is sought to be placed of subsequent of events to indicate that the company is unable to pay its just debts. In the absence of clear specific pleading which pleading the company ought to have knowledge and information for meeting the contentions, it will not be possible to accept the additional material which is now sought to be placed.

Therefore what is essential is that there must be pleadings which the company must be called upon to meet.

As already stated, in the absence of necessary pleadings the pleas of suspension of business for one year and loss of substratum cannot be entertained.

8. That the Company closed its operations is not seriously disputed by the petitioners. Even otherwise, the petitioners have not explained their silence and inaction for almost three years. The petition has been filed with delay which is unexplained and suppressing the fact that the petitioner no.6 had also filed a civil suit for the recovery for a sum of Rs. 90,000/- which was subsequently dismissed for default. The said suit was filed apparently on the same date as this petition before this Court, but no mention of it was made in the petition. Learned Counsel on behalf of the petitioners submits that at

present an application for restoration of the suit has been made. It may be so. Certainly it was the duty of the petitioners to have disclosed to this Court that one of them had also filed a suit for the recovery of the amount which was involved in this petition. The delay and suppression of facts indulged by the petitioners also entail the dismissal of this petition. It is well settled that Section 433 of the Act does not confer on any person a right to seek an order that a Company shall be wound up. It only confers discretionary jurisdiction on this Court to wind up a Company. This being equity jurisdiction the Court cannot and ought not ignore the said well known maxims of equity.

9. In view of the above, I find there is no merit in this petition and consequently the same is hereby dismissed, with costs of Rs. 5,000/-.

N.A. BRITTO, J.

NH/-